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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,613	03/19/2004	Donald J. Lewis	FGT 223D4 (81099032)	8587

7590 03/22/2006

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EXAMINER

TRAN, BINH Q

ART UNIT PAPER NUMBER

3748

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/805,613

Applicant(s)

LEWIS, DONALD J.

Examiner

BINH Q. TRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-12 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-12, 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/04/05/04/06/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: IDS filed 09/7/04; 09/27/04; 08/05; 12/05;.

### DETAILED ACTION

This office action is in response to the election/restriction requirement filed December 29, 2005.

#### *Response To Election/Restriction*

Applicant's election without traverse of the species of Group II, in response to the election/restriction requirement mailed December 01, 2005, is acknowledged. Page 2

Claims 1-4, and 12-32 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions. Election was made without traverse in Paper filed December 29, 2005. Claims 5-12, and 33 remain for prosecution.

Filed December 29,

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

*Claims 5, 8-9, 12, and 33 are rejected under 35 U.S.C. 102 (b) as being anticipated by Majima (Patent Number 6761147).*

Regarding claims 5, 9, and 33, Majima discloses a method for determining the number of cylinder strokes and valve pattern in a cycle of a cylinder of an internal combustion engine (1, 111), the method comprising: determining an operating condition of at least one catalyst brick (19) located in an exhaust system (7) of said internal combustion engine; selecting a number of cylinders in which to delay a valve opening after a combustion event in respective cylinders, based on said catalyst brick operating condition (e.g. See Figures 7-10; col. 9, lines 34-67; col. 10, lines 1-8); determining a valve pattern to operate in said selected cylinders, based on said catalyst brick operating condition; and operating said number of valves in said selected cylinders during a cycle of said internal combustion engine (e.g. See Figures 7-14; col. 10, lines 9-67; cols. 11-12, lines 1-67; and col. 13, lines 1-17).

Regarding claims 8 and 12, Majima further discloses that the catalyst state is temperature of said catalyst brick (e.g. See Figures 7-10; col. 10, lines 11-45).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 6-7, and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majima in view of Takahashi et al. (Takahashi) (Patent Number 6,341,487).***

Regarding claims 6-7 and 10-11, Majima discloses all the claimed limitation as discussed above except that the operating state of said catalyst brick is oxidant storage capacity.

Takahashi teaches that it is conventional in the art, to use an operating state of said catalyst brick as an oxidant storage capacity (e.g. See col. 19, lines 34-67; col. 20, lines 1-23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to use an operating state of said catalyst brick as an oxidant storage capacity of Majima, as taught by Takahashi for the purpose of controlling air-fuel ratio of the exhaust gas flowing into the catalytic converter, so as to reduce the poisoned materials in the purifying catalyst and to reduce amount of nitrogen oxides in the exhaust gas of the lean-burn engine, and further improve the performance of the engine and the efficiency of the emission device.

#### ***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of five patents:

Sonoda et al. (Pat. No. 6837040), Ogiso (Pat. No. 6526745), Uranishi et al. (Pat. No. 6594987), Nozawa et al. (Pat. No. 6513319), and Ogiso et al. (Pat. No. 519933) all disclose an exhaust gas purification for use with an internal combustion engine.

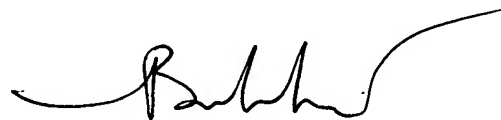
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Binh Tran whose telephone number is (571) 272-4865. The examiner can normally be reached on Monday-Friday from 8:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reach on (571) 272-4859. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BT  
March 17, 2006



Binh Q. Tran  
Patent Examiner  
Art Unit 3748